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SENATE BILL 8

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2007

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO LAW ENFORCEMENT; REVISING THE DEFINITION OF "SEX OFFENDER"; REDUCING THE TIME SEX OFFENDERS HAVE BEFORE THEY HAVE TO REGISTER WITH THE COUNTY SHERIFF; LENGTHENING REGISTRATION PERIODS FOR CERTAIN SEX OFFENDERS; REQUIRING A SEX OFFENDER TO PROVIDE ADDITIONAL REGISTRATION INFORMATION; AMENDING SECTIONS OF THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 29-11A-2 NMSA 1978 (being Laws 1995, Chapter 106, Section 2, as amended) is amended to read:

"29-11A-2. FINDINGS--PURPOSE.--

A. The legislature finds that:

(1) sex offenders pose a significant risk of recidivism; and

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1 (2) the efforts of law enforcement agencies to
2 protect their communities from sex offenders are impaired by
3 the lack of information available concerning convicted sex
4 offenders who live within the agencies' jurisdictions.

5 B. The purpose of the Sex Offender Registration and
6 Notification Act is to assist law enforcement agencies' efforts
7 to protect their communities by:

8 (1) requiring a sex ~~[offenders]~~ offender who
9 ~~[are residents]~~ is a resident of New Mexico to register with
10 the ~~[county]~~ sheriff of the county in which the sex offender
11 resides;

12 (2) requiring a sex ~~[offenders]~~ offender who
13 ~~[are residents]~~ is a resident in ~~[other states]~~ another state,
14 but who ~~[are]~~ is employed in New Mexico, ~~[or who attend]~~
15 attends school in New Mexico or visits New Mexico for more than
16 seventy-two hours, to register with the ~~[county]~~ sheriff of the
17 county in which the sex offender visits, works or attends
18 school;

19 (3) requiring the establishment of a central
20 registry for sex offenders; and

21 (4) providing public access to information
22 regarding certain registered sex offenders."

23 Section 2. Section 29-11A-3 NMSA 1978 (being Laws 1995,
24 Chapter 106, Section 3, as amended) is amended to read:

25 "29-11A-3. DEFINITIONS.--As used in the Sex Offender

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1 Registration and Notification Act:

2 A. "conviction" means a conviction in any court of
3 competent jurisdiction and includes a deferred sentence, but
4 does not include a conditional discharge;

5 B. "institution of higher education" means a:

6 (1) private or public post-secondary
7 educational institution;

8 (2) trade school; or

9 (3) professional school;

10 C. "registration requirement" means any requirement
11 set forth in Section 29-11A-4 NMSA 1978 that requires a sex
12 offender to register, provide information, including a DNA
13 sample, renew, revise or change [~~his~~] registration information
14 or provide written notice or disclosure regarding [~~his~~] the sex
15 offender's status as a sex offender;

16 D. "sex offender" means a person who:

17 (1) is a resident of New Mexico who is
18 convicted of a sex offense in New Mexico;

19 (2) changes [~~his~~] residence to New Mexico,
20 when that person has been convicted of a sex offense in another
21 state pursuant to state, federal, tribal or military law;

22 (3) is a resident of New Mexico who is
23 convicted of a sex offense pursuant to federal, tribal or
24 military law;

25 (4) does not have an established residence in

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1 New Mexico, but lives in a shelter, halfway house or
2 transitional living facility or stays in multiple locations in
3 New Mexico and who has been convicted of a sex offense in New
4 Mexico or any other state pursuant to state, federal, tribal or
5 military law; or

6 (5) is a resident of another state and who has
7 been convicted of a sex offense pursuant to state, federal,
8 tribal or military law, but who is:

9 (a) employed full time or part time in
10 New Mexico for a period of time exceeding fourteen days or for
11 an aggregate period of time exceeding thirty days during any
12 calendar year, including any employment or vocation, whether
13 financially compensated, volunteered or for the purpose of
14 government or educational benefit; ~~[or]~~

15 (b) enrolled on a full-time or part-time
16 basis in a private or public school or an institution of higher
17 education in New Mexico; ~~[and]~~ or

18 (c) a visitor from another state and
19 will be in New Mexico for more than seventy-two hours; and

20 E. "sex offense" means:

21 (1) criminal sexual penetration in the first,
22 second, third or fourth degree, as provided in Section 30-9-11
23 NMSA 1978;

24 (2) criminal sexual contact in the fourth
25 degree, as provided in Section 30-9-12 NMSA 1978;

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1 (3) criminal sexual contact of a minor in the
2 second, third or fourth degree, as provided in Section
3 30-9-13 NMSA 1978;

4 (4) sexual exploitation of children, as
5 provided in Section 30-6A-3 NMSA 1978;

6 (5) sexual exploitation of children by
7 prostitution, as provided in Section 30-6A-4 NMSA 1978;

8 (6) kidnapping, as provided in Section
9 30-4-1 NMSA 1978, when the victim is less than eighteen years
10 of age and the offender is not a parent of the victim;

11 (7) false imprisonment, as provided in Section
12 30-4-3 NMSA 1978, when the victim is less than eighteen years
13 of age and the offender is not a parent of the victim;

14 (8) aggravated indecent exposure, as provided
15 in Section 30-9-14.3 NMSA 1978;

16 (9) enticement of child, as provided in
17 Section 30-9-1 NMSA 1978;

18 (10) incest, as provided in Section 30-10-3
19 NMSA 1978, when the victim is less than eighteen years of age;

20 (11) solicitation to commit criminal sexual
21 contact of a minor in the second, third or fourth degree, as
22 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

23 (12) attempt to commit any of the sex offenses
24 set forth in Paragraphs (1) through (10) of this subsection, as
25 provided in Section 30-28-1 NMSA 1978."

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1 Section 3. Section 29-11A-4 NMSA 1978 (being Laws 1995,
2 Chapter 106, Section 4, as amended) is amended to read:

3 "29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION
4 REQUIRED--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

5 A. A sex offender residing in this state shall
6 register with the [~~county~~] sheriff for the county in which the
7 sex offender resides.

8 B. A sex offender who is a resident of New Mexico
9 shall register with the county sheriff no later than [~~ten days~~]
10 seventy-two hours after being released from the custody of the
11 corrections department, a municipal or county jail or a
12 federal, military or tribal correctional facility or detention
13 center or being placed on probation or parole. A sex offender
14 who changes [~~his~~] residence to New Mexico shall register with
15 the county sheriff no later than [~~ten days~~] seventy-two hours
16 after [~~his~~] arrival in this state. When a sex offender
17 registers with the county sheriff, [~~he~~] the sex offender shall
18 provide the following registration information:

19 (1) [~~his~~] the sex offender's legal name and
20 any other names or aliases that [~~he~~] the sex offender is using
21 or has used;

22 (2) [~~his~~] the sex offender's date of birth;

23 (3) [~~his~~] the sex offender's social security
24 number;

25 (4) [~~his current address~~] the addresses of all

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1 residences the sex offender owns, specifying which address is
2 the sex offender's primary residence;

3 (5) [~~his~~] the sex offender's place of
4 employment;

5 (6) the sex offense for which [~~he~~] the sex
6 offender was convicted; [~~and~~]

7 (7) the date and place of [~~his~~] the sex
8 offense conviction; and

9 (8) the sex offender's motor vehicle
10 registration information with a description of all motor
11 vehicles that are owned in full or in part by the sex offender
12 or that the sex offender may use.

13 C. A sex offender who is a resident of another
14 state but who is employed in New Mexico, [~~or~~] attending public
15 or private school or an institution of higher education in New
16 Mexico or visiting New Mexico shall register with the [~~county~~]
17 sheriff for the county in which the sex offender is working or
18 attending school or an institution of higher education or
19 visiting New Mexico.

20 D. A sex offender who is a resident of another
21 state but who is employed in New Mexico or attending public or
22 private school or an institution of higher education in New
23 Mexico or visiting New Mexico shall register with the county
24 sheriff no later than [~~ten days~~] seventy-two hours after
25 beginning work, [~~or~~] school or the visit. When the sex

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1 offender registers with the county sheriff, [~~he~~] the sex
2 offender shall provide the following registration information:

3 (1) [~~his~~] the sex offender's legal name and
4 any other names or aliases that [~~he~~] the sex offender is using
5 or has used;

6 (2) [~~his~~] the sex offender's date of birth;

7 (3) [~~his~~] the sex offender's social security
8 number;

9 (4) [~~his~~] the sex offender's current address
10 in [~~his~~] the sex offender's state of residence and, if
11 applicable, the address of [~~his~~] the sex offender's place of
12 lodging in New Mexico while [~~he is~~] working or attending school
13 or an institution of higher education;

14 (5) [~~his~~] the sex offender's place of
15 employment or the name of the school [~~he~~] the sex offender is
16 attending;

17 (6) the sex offense for which [~~he~~] the sex
18 offender was convicted; [~~and~~]

19 (7) the date and place of [~~his~~] the sex
20 offense conviction; and

21 (8) the sex offender's motor vehicle
22 registration information and a description of all motor
23 vehicles that the sex offender may use in New Mexico.

24 E. When a sex offender registers with a county
25 sheriff, the sheriff shall obtain:

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1 (1) a photograph of the sex offender and a
2 complete set of the sex offender's fingerprints;

3 (2) a description of [~~any~~] tattoos, scars or
4 other distinguishing features on the sex offender's body that
5 would assist in identifying the sex offender; and

6 (3) a DNA sample [~~of his DNA~~] for inclusion in
7 the sex offender DNA identification system pursuant to the
8 provisions of the DNA Identification Act.

9 F. When a sex offender who is registered changes
10 [~~his~~] residence within the same county, the sex offender shall
11 send written notice of [~~his~~] the change of address to the
12 county sheriff [~~no later than ten days after~~] prior to
13 establishing [~~his~~] the new residence.

14 G. When a sex offender who is registered changes
15 [~~his~~] residence to a new county in New Mexico, the sex offender
16 shall register with the [~~county~~] sheriff of the new county no
17 later than [~~ten days~~] seventy-two hours after establishing
18 [~~his~~] the new residence, including proof of the new residence.
19 The sex offender shall also send written notice of the change
20 in residence to the county sheriff with whom [~~he~~] the sex
21 offender last registered no later than [~~ten days~~] seventy-two
22 hours after establishing [~~his~~] the new residence, including
23 proof of the new residence.

24 H. When a sex offender who is registered or
25 required to register does not have an established residence,

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1 but lives in a shelter, halfway house or transitional living
2 facility or stays in multiple locations in New Mexico, the sex
3 offender shall register with the [~~county~~] sheriff for each
4 county in which the sex offender is living or temporarily
5 located. The sex offender shall register no later than [~~ten~~
6 ~~days~~] seventy-two hours after a change in [~~his~~] living
7 arrangements or temporary location.

8 I. When a sex offender who is registered or
9 required to register is employed, begins a vocation or is
10 enrolled as a student at an institution of higher education in
11 New Mexico, the sex offender shall disclose [~~his~~] the sex
12 offender's status as a sex offender in writing to the [~~county~~]
13 sheriff for the county in which the institution of higher
14 education is located, the law enforcement entity responsible
15 for the institution of higher education and the registrar for
16 the institution of higher education no later than [~~ten days~~]
17 seventy-two hours after beginning employment, beginning a
18 vocation or enrolling at the institution of higher education.
19 The sex offender shall also send written notice of any change
20 regarding [~~his~~] employment, vocation or enrollment status at an
21 institution of higher education to the county sheriff, the law
22 enforcement entity and the registrar no later than [~~ten days~~]
23 seventy-two hours after the change in [~~his~~] employment,
24 vocation or enrollment status.

25 J. When a sex offender who is registered or

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1 required to register is employed or is enrolled as a student at
2 a public or private school in New Mexico, the sex offender
3 shall disclose [~~his~~] the sex offender's status as a sex
4 offender in writing to the [~~county~~] sheriff for the county in
5 which the school is located and to the principal of the school
6 no later than [~~ten days~~] seventy-two hours after enrolling at
7 the school. The sex offender shall also send written notice of
8 any change regarding [~~his~~] enrollment status at a school to the
9 county sheriff and the principal no later than [~~ten days~~]
10 seventy-two hours after the change in [~~his~~] enrollment status.

11 K. When a sex offender who is registered or
12 required to register is employed, begins a vocation or
13 volunteers [~~his~~] services, regardless of whether the sex
14 offender receives payment or other compensation, the sex
15 offender shall disclose [~~his~~] the sex offender's status as a
16 sex offender in writing to [~~his~~] the sex offender's employer,
17 supervisor or person similarly situated. The written
18 disclosure shall be made immediately upon beginning [~~his~~]
19 employment, vocation or volunteer service.

20 L. Following [~~his~~] initial registration pursuant to
21 the provisions of this section:

22 (1) a sex offender required to register
23 pursuant to the provisions of Subsection D of Section 29-11A-5
24 NMSA 1978 shall renew [~~his~~] registration with the county
25 sheriff not less than once in each ninety-day period following

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1 the date of the sex offender's initial registration for the
2 entirety of [~~his~~] the sex offender's natural life; and

3 (2) a sex offender required to register
4 pursuant to the provisions of Subsection E of Section 29-11A-5
5 NMSA 1978 shall [~~annually~~] renew [~~his~~] the sex offender's
6 registration with the county sheriff [~~prior to December 31 of~~
7 ~~each subsequent calendar year~~] not less than once in each
8 ninety-day period following the date of the sex offender's
9 initial registration for a period of [~~ten~~] twenty years.

10 M. Notwithstanding the provisions of Paragraph (2)
11 of Subsection L of this section, if a sex offender is convicted
12 a second or subsequent time for a sex offense set forth in
13 Subsection E of Section 29-11A-5 NMSA 1978, [~~he~~] the sex
14 offender shall renew [~~his~~] registration with the county sheriff
15 not less than once in each ninety-day period following the date
16 of the sex offender's initial registration for the entirety of
17 [~~his~~] the sex offender's natural life.

18 N. A sex offender who willfully or knowingly fails
19 to comply with the registration requirements set forth in this
20 section is guilty of a fourth degree felony and shall be
21 sentenced pursuant to the provisions of Section 31-18-15 NMSA
22 1978. A sex offender who willfully or knowingly fails to
23 comply with the registration requirements set forth in this
24 section after a first or subsequent conviction for a violation
25 pursuant to this section is guilty of a third degree felony and

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1 shall be sentenced pursuant to the provisions of Section
2 31-18-15 NMSA 1978. The willful failure to comply with any
3 registration requirement set forth in this section shall be
4 deemed part of a continuing transaction or occurrence. A
5 conviction pursuant to this subsection shall not be considered
6 a felony for purposes of the imposition of sentencing
7 enhancements pursuant to the provisions of Section 31-18-17
8 NMSA 1978.

9 0. A sex offender who willfully or knowingly
10 provides false information when complying with the registration
11 requirements set forth in this section is guilty of a fourth
12 degree felony and shall be sentenced pursuant to the provisions
13 of Section 31-18-15 NMSA 1978. A sex offender who willfully or
14 knowingly provides false information when complying with the
15 registration requirements set forth in this section after a
16 first or subsequent conviction for a violation pursuant to this
17 section is guilty of a third degree felony and shall be
18 sentenced pursuant to the provisions of Section 31-18-15 NMSA
19 1978. The willful providing by a sex offender of false
20 information with respect to the registration requirements set
21 forth in this section shall be deemed part of a continuing
22 transaction or occurrence. A conviction pursuant to this
23 subsection shall not be considered a felony for purposes of the
24 imposition of sentencing enhancements pursuant to the
25 provisions of Section 31-18-17 NMSA 1978."

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1 Section 4. Section 29-11A-4.1 NMSA 1978 (being Laws 2000,
2 Chapter 8, Section 6, as amended) is amended to read:

3 "29-11A-4.1. PROCEDURES WHEN A SEX OFFENDER MOVES FROM
4 NEW MEXICO TO ANOTHER STATE.--

5 A. If a sex offender intends to move from New
6 Mexico to another state, no later than thirty days prior to
7 moving to the other state, [~~he~~] the sex offender shall:

8 (1) notify the [~~county~~] sheriff of the county
9 [~~he~~] the sex offender resides in that [~~he~~] the sex offender is
10 moving to the other state; and

11 (2) provide the county sheriff with a written
12 notice that identifies the [~~state~~] new address of the residence
13 to which the sex offender is moving.

14 B. Within five days of receiving a sex offender's
15 written notice of intent to move to another state, the county
16 sheriff shall transmit that information to the department of
17 public safety. Within five days of receiving that information
18 from a county sheriff, the department shall contact the state
19 agency responsible for registering sex offenders in the state
20 to which the sex offender is moving. The department shall
21 provide that state agency with registration information
22 regarding the sex offender. The department shall also obtain
23 information regarding registration requirements for sex
24 offenders in the state to which the sex offender is moving.
25 The department shall provide the sex offender with written

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1 notification of the registration requirements in the state to
2 which the sex offender is moving.

3 C. A sex offender who willfully fails to comply
4 with the requirements set forth in this section is guilty of a
5 fourth degree felony and shall be sentenced pursuant to the
6 provisions of Section 31-18-15 NMSA 1978."

7 Section 5. Section 29-11A-5 NMSA 1978 (being Laws 1995,
8 Chapter 106, Section 5, as amended) is amended to read:

9 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
10 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
11 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

12 A. A county sheriff shall maintain a local registry
13 of sex offenders in [~~his~~] the sheriff's jurisdiction required
14 to register pursuant to the provisions of the Sex Offender
15 Registration and Notification Act.

16 B. The county sheriff shall forward:

17 (1) registration information obtained from sex
18 offenders to the department of public safety. The initial
19 registration information and any new registration information
20 subsequently obtained from a sex offender shall be forwarded by
21 the county sheriff no later than ten working days after the
22 information is obtained from a sex offender. If the department
23 of public safety receives information regarding a sex offender
24 from a governmental entity other than a county sheriff, the
25 department shall send that information to the sheriff for the

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1 county in which the sex offender resides; and

2 (2) samples of DNA obtained from sex offenders
3 to the administrative center for the sex offender DNA
4 identification system pursuant to the provisions of the DNA
5 Identification Act.

6 C. The department of public safety shall maintain a
7 central registry of sex offenders required to register pursuant
8 to the provisions of the Sex Offender Registration and
9 Notification Act. The department shall participate in the
10 national sex offender registry administered by the United
11 States department of justice. The department shall send
12 conviction information and fingerprints for all sex offenders
13 registered in New Mexico to the national sex offender registry
14 administered by the United States department of justice and to
15 the federal bureau of investigation.

16 D. The department of public safety shall retain
17 registration information regarding a sex offender convicted for
18 any of the following sex offenses for the entirety of [~~his~~] the
19 sex offender's natural life:

20 (1) criminal sexual penetration in the first,
21 second or third degree, as provided in Section 30-9-11 NMSA
22 1978;

23 (2) criminal sexual contact of a minor in the
24 second, third or fourth degree, as provided in Section
25 30-9-13 NMSA 1978;

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1 (3) sexual exploitation of children, as
2 provided in Section 30-6A-3 NMSA 1978;

3 (4) kidnapping, as provided in Section
4 30-4-1 NMSA 1978, when the victim is less than eighteen years
5 of age and the offender is not a parent of the victim;

6 (5) criminal sexual contact in the fourth
7 degree, as provided in Section 30-9-12 NMSA 1978; [~~or~~]

8 (6) aggravated indecent exposure, as provided
9 in Section 30-9-14.3 NMSA 1978;

10 (7) enticement of child, as provided in
11 Section 30-9-1 NMSA 1978; or

12 [~~(6)~~] (8) attempt to commit any of the sex
13 offenses set forth in Paragraphs (1) through [~~(5)~~] (7) of this
14 subsection, as provided in Section 30-28-1 NMSA 1978.

15 E. The department of public safety shall retain
16 registration information regarding a sex offender convicted for
17 the following offenses for a period of [~~ten~~] twenty years
18 following the sex offender's conviction, release from prison or
19 release from probation or parole, whichever occurs later:

20 (1) criminal sexual penetration in the fourth
21 degree, as provided in Section 30-9-11 NMSA 1978;

22 (2) sexual exploitation of children by
23 prostitution, as provided in Section 30-6A-4 NMSA 1978;

24 (3) false imprisonment, as provided in Section
25 30-4-3 NMSA 1978, when the victim is less than eighteen years

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1 of age and the offender is not a parent of the victim;

2 [~~(4)~~] ~~aggravated indecent exposure, as provided~~
3 ~~in Section 30-9-14.3 NMSA 1978;~~

4 ~~(5) enticement of child, as provided in~~
5 ~~Section 30-9-1 NMSA 1978;~~

6 ~~(6)~~] (4) incest, as provided in Section
7 30-10-3 NMSA 1978, when the victim is less than eighteen years
8 of age;

9 [~~(7)~~] (5) solicitation to commit criminal
10 sexual contact of a minor in the second, third or fourth
11 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;
12 or

13 [~~(8)~~] (6) attempt to commit any of the sex
14 offenses set forth in Paragraphs (1) through [~~(6)~~] (4) of this
15 subsection, as provided in Section 30-28-1 NMSA 1978.

16 F. Notwithstanding the provisions of Subsection E
17 of this section, if a sex offender is convicted a second or
18 subsequent time for a sex offense set forth in that subsection,
19 the department of public safety shall retain information
20 regarding the sex offender for the entirety of the sex
21 offender's natural life.

22 G. The department of public safety shall adopt
23 rules necessary to carry out the provisions of the Sex Offender
24 Registration and Notification Act. Rules necessary for the
25 collection of DNA samples and the administration and operation

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1 of the sex offender DNA identification system shall be adopted
2 by the DNA identification system oversight committee pursuant
3 to the provisions of the DNA Identification Act."

4 Section 6. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

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